



August 3, 2007

**VIA HAND DELIVERY AND EMAIL**

Mr. Art Anselene  
Acting Town Manager  
Town of Herndon  
777 Lynn Street  
Herndon, Virginia 20172

Re: Acquisition of Downtown Herndon Parcels

Dear Mr. Anselene:

On behalf of JPI Development Services, L.P. ("Purchaser"), I am pleased to set forth below the terms under which Purchaser would purchase land located in Downtown Herndon, Virginia. We are excited about this opportunity and have already made significant progress by placing the adjacent privately owned parcels under contract. This letter of intent will set out the basis for an eventual contract between Purchaser and Town of Herndon ("Seller"). This letter of intent is not a contract, is not supported by consideration and does not afford legal or equitable rights to either party. Either party may nullify this letter of intent by notice in writing to the other.

1. Property: The proposed transaction involves simple fee interest in approximately 212,708 square feet of ground located in Downtown Herndon, Virginia defined as Fairfax County Tax Map 0162-02 parcels 10, 10B, 10C, 10D, 11, 15A, 15B, 16, 16A, 17, 18, 20B and 20C, also shown as 810 and 800 Vine Street, 726 and 750 Center Street and 731 Station Street, along with Town street right-of-way, to be resubdivided by Purchaser ("Property").
2. Project: A luxury mixed-use retail, arts and residential project to be approved by the Town of Herndon, including assemblage and redevelopment of Fairfax County Tax Map 0162-02 parcels 25, 26, 27A, 29, 74, 75, 76, 77, 78, 79, 82, 83 (collectively, "Private Owner Parcels"). Together with the Property and the Private Owner Parcels, Purchaser shall seek to entitle, design and construct a new vibrant mixed-use project with a maximum overall FAR intensity of 2.0, consistent with the Town's current PD-D (Planned Development-Downtown) zoning district requirements and allowing for minor modifications for height and other features as the ordinance provides including, if approved by a subsequent legislative process,

- Approximately 60,000 to 80,000 square feet of high-quality retail space, suitable for restaurants and a variety of retailers. Outdoor seating and café areas will be included as appropriate. Purchaser shall be responsible for obtaining tenants for the retail space. Small-scale office space may be incorporated into the Project within the 60,000 to 80,000 square feet described above, provided there is market demand and is economically feasible.
- Three high-quality, architecturally distinct multi-family luxury residential buildings, comprised of approximately 550 to 600 units total in three, four and five story configurations. The buildings will include leasing centers and clubhouse amenities for the buildings' residents.
- Screened structured parking garages to accommodate all parking needs for the new development.
- Courtyards for building residents and open spaces for the public, with an overall open space requirement of approximately 30%.
- Undergrounding of overhead utility lines shall occur per the Town of Herndon Zoning Ordinance requirement, but Purchaser may request a waiver from the Zoning Ordinance if it is not economically and physically feasible for the Purchaser and would result in substantial injustice or hardship. The areas to be considered are at Elden Street (from Center Street to Station Street), Center Street (from Locust Street to the W&OD Trail), Station Street (from Elden Street to the W&OD Trail), Spring Street (from Elden Street to Locust Street), the north side of Locust Street (from Center Street to Spring Street), the north side of Vine Street and areas where local distribution facilities run parallel to the W&OD property and the high voltage facilities located thereon. The specific extent of undergrounding and the need for extension of the undergrounding of existing and new utilities to off-site locations where practical and appropriate transitions to existing overhead or underground utilities shall be determined by the parties prior to the rezoning of the Property and Private Owner Parcels. The goal of both parties shall be avoid or minimize negative visual impacts of utilities and to insure a coherent utility plan for the Herndon Downtown in cooperation with Dominion Virginia Power and to the benefit of the Project and all future owners.

- All streetscape materials shall be in conformance with the Town of Herndon Public Facilities Manual, Commercial Village Streetscape standards.
- Additional improvements described in Section 3.

3. In-Kind Exchange:

Seller and Purchaser agree that the value of the Property ("Property Value") rezoned to a PD-D zone is Twenty Million Four Hundred Thousand Dollars (\$20,400,000). In exchange for fee simple title to the Property, Purchaser shall construct and finance the following in-kind improvements ("Town's Improvements") for the Seller in general conformance with the Program Design Standards for Public Facilities document dated September 2006:

- 300 dedicated screened structured parking spaces for use by the Town of Herndon. Parking for the cultural arts center, the Town's 300 spaces and the parking for the commercial space shall be co-mingled on Parcel B with no time of day restrictions.
- Approximately 12,000 square feet cultural arts center with flexible space programming for performance space, 250 seats, lobby area, restrooms, storage and backstage areas in general conformance with the Program of Requirements dated October 4, 2006 for the Downtown Redevelopment Project Arts Center.
- Redesigned open green spaces integrating the existing Town Green, the W&OD Trail crossings and areas by the proposed cultural arts center. Purchaser shall coordinate and work with representatives from the Town of Herndon and NVRPA.
- Realignment and possible signalization at the intersection of Elden Street and Center Street. Purchaser shall conduct a traffic and signalization warrant study. If needed, Purchaser shall contribute a portion of Fairfax County Tax Map parcel 0162-02-74 and 75 towards the realignment/widening of Center Street.
- Phasing of the Town of Herndon's existing parking lots (part of the Town's parking program) onto a portion of the Private Owner Parcels during construction and/or a portion of the Property. Purchaser shall collaborate with the Seller to create a phasing plan that accommodates the 182 parking spaces comprising the Town's Public Shared Parking continuously through the construction period and balances

the needs of the Purchaser's construction phasing plan.

- Streetscapes and sidewalks directly associated with the Town Improvements in conformance with the Town of Herndon Public Facilities Manual, Commercial Village Streetscape standards.
- All related wet and dry utility distribution and connections, including storm water management directly associated with the Town Improvements.
- All design, engineering, permitting, construction and financing costs associated with the Town's Improvements and pro-rata share of costs related to the design, engineering, permitting, construction and financing of the Project ("Project Costs").
- All debt and equity financing related to the Town's Improvements. In addition, Purchaser shall provide a guarantee for the completion of the Town's Improvements, to be further described in the Contract of Sale.

Purchaser estimates that the total value for the Town's Improvements, inclusive of the hard, soft and additional costs as listed above ("Town's Improvement Cost") exceeds the Property Value. **Although the estimated Town's Improvement Cost exceeds the Property Value, the Town will not be required to fund or finance any portion of the Town's Improvement Cost.**

Purchaser shall provide periodic updates of the Town's Improvement Cost to the Seller and shall provide a final Town's Improvement Cost prior to the commencement of construction of the Project.

In the event that there is a difference between the final Town's Improvement Cost and the Property Value, it shall be designated by Purchaser to fund unforeseeable costs related to the Town's Improvements during construction ("Project Contingency"). In the event the Project Contingency is not utilized, such amount shall be set aside for additional future in-kind exchange(s) (i.e. additional underground utilities, streetscape upgrades, additional open space, operating cost reserve for parking, etc.), to be determined by the Seller at such later time.

4. Earnest Money Deposit: Within five (5) days after the expiration of the Feasibility Period, the Purchaser shall deposit with Stewart Title and Escrow, Inc. (the Escrow Agent) an earnest money deposit, the sum of **One Hundred**

**Thousand Dollars (\$100,000.00)** payable in cash.

Thirty (30) days after Town Council approval of a Zoning Map Amendment of the Property and Private Owner Parcels, Purchaser shall increase the Earnest Money Deposit to **Five Hundred Thousand Dollars (\$500,000.00)** and shall be non-refundable to the Purchaser. In the event that the Purchaser does not have rezoning approval within 12 months after the expiration of the Feasibility Period, the Purchaser may terminate the Contract of Sale and the Earnest Money Deposit shall be returned to the Purchaser. In the event of Seller default, the Earnest Money Deposit shall be refunded to the Purchaser. In the event of Purchaser default, the Earnest Money Deposit shall be released by the Escrow Agent to the Seller.

- Any interest accrued on the earnest money shall be deemed a part of such earnest money. At Closing, the Earnest Money Deposit shall be released by the Escrow Agent to the Purchaser. Purchaser shall provide a guarantee for the completion of the Town's Improvements, to be further described in the Contract of Sale

5. Inspection Documents: Within five (5) days after the full execution of the Contract of Sale, Seller shall forward all public records in Seller's possession or control relating to the environmental condition, valuation, and tax status, and all land/use, maintenance, service or utility agreements affecting the ownership or use of the Property and any other documentation that Landowner may possess which would be helpful to Purchaser in ascertaining the value and / or ultimate best use of the property.
6. Feasibility Period: Purchaser shall have **Ninety (90) Days** from the execution of the Contract of Sale (the Feasibility Period) to conduct an analysis of the Inspection Documents, and of the Property and to make all inspections of the Property, which Purchaser deems necessary or desirable. All inspections shall be accomplished at Purchaser's expense, provided that Seller shall cooperate with Purchaser as necessary.  
  
If Purchaser determines, in Purchaser's sole and absolute discretion, for any or no reason whatsoever, that the Property is not suitable for Purchaser's intended use, Purchaser shall have the right to terminate the Agreement on or before the expiration of the Feasibility Period.
7. Closing: Closing shall occur within 30 days after the satisfaction of all the Closing Conditions listed below and the settlement of the Private Owner Parcels. In any event Closing shall occur before December 31, 2010.

8. Closing Conditions: The following shall be conditions to Purchaser's obligation to closing the contemplated transaction. Seller and Purchaser shall work in good faith to eliminate closing contingencies as early as possible:
- The parties shall execute definitive Contract of Sale documents in form approved by Seller's Town Attorney and approved if it is by ordinance of Seller's Town Council, adopted (if it is) after a public hearing.
  - Environmental tests shall indicate that no hazardous wastes or hazardous substances exist on the property that cannot be remedied to the satisfaction of Purchaser, which were not present during Feasibility Period.
  - There shall be no moratoria affecting the property.
  - There shall be no leases encumbering the property.
  - Consistent with the Town's current PD-D (Planned Development-Downtown) zoning district requirements and allowing for minor modifications for height and other features as the ordinance provides, rezoning approval by the Seller to a maximum 2.0 overall FAR across the entire consolidated site, if Seller's Town Council through a legislative process may take such an action. The entire consolidated site includes all of the Private Owner Parcels and the Property. The floor area of the cultural arts center is included in the maximum 2.0 overall FAR. Any proffers associated solely with the development of the residential project shall be the responsibility of the Purchaser.
9. Conditions at Closing: Seller will deliver the Property vacant and in its current condition and Purchaser, at its expense, will clear the property of all structures on or after the Closing date.
10. Commissions: None.

Should the above concept be acceptable to Seller, please execute a copy of this letter in the space provided below and return the same to my attention so that we can prepare a formal Contract of Sale incorporating these terms and any additional terms to which we may agree.

The terms and provisions set forth in this letter of intent, together with other terms and provisions relating to this transaction, shall be set forth more completely in the Contract of Sale intended to be and entered into between the parties described herein. This letter of intent merely constitutes an expression of intent of Seller and Purchaser only, and any final and

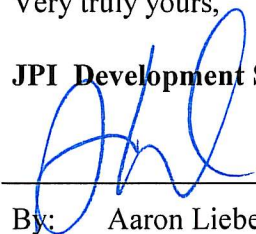


binding agreement shall be subject to the preparation, negotiation and execution of definitive legal documents, including, without limitation, the Contract of Sale. This is not an agreement to enter into an agreement or contract. Seller agrees not to offer the property for sale or lease to any other party during Contract of Sale preparation. In the event the Contract of Sale is not executed by the respective parties thereto for any reason whatsoever, neither party shall have any liability to the other and each party shall bear its own expenses incurred in connection with the transaction described herein.

This letter of intent is not an offer or acceptance supporting a contract and is valid until August 31, 2007. Thank you for your consideration of this letter of intent and we look forward to the opportunity to work with you. Should you have any questions or concerns, please do not hesitate to contact me at (703) 847-0900.

Very truly yours,

**JPI Development Services, LP**



By: Aaron Liebert  
Area Managing Partner & Senior Vice  
President

**AGREED and ACCEPTED:**

this \_\_\_\_ day of \_\_\_\_\_, 2007:

Town of Herndon

By: \_\_\_\_\_

Its: Mayor